ROGUE EXCURSIONS UNLIMITED, INC.

IBLA 86-1476 Decided September 20, 1988

Appeal from a decision of the Area Manager, Grants Pass Resource Area, Bureau of Land Management, affirming a prior decision that an administrative penalty should be imposed for failure to submit accurate information to an authorized officer. MRP-4.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Permits -- Public Lands: Special Use Permits -- Special Use Permits -- Wild and Scenic Rivers Act

   It was proper for BLM to place the holder of a special recreation permit for commercial use of a wild and scenic river on probationary status. The evidence established that the permittee gave an authorized officer of BLM inaccurate information on a trip ticket. To do so was a specified violation of the permit stipulations, and the sanction imposed by BLM was called for in the permit stipulations.

APPEARANCES: Richard W. Courtright, Esq., Medford, Oregon, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Rogue Excursions Unlimited, Inc. (REUI, appellant), has appealed from a June 9, 1986, decision of the Area Manager, Grants Pass Resource Area, Bureau of Land Management (BLM), placing REUI on probationary status because of REUI's failure to submit accurate trip reports to an authorized officer.

On May 8, 1985, BLM issued a 5-year Special Recreation Permit No. MRP-4 (Permit) to REUI, authorizing REUI's commercial use of the Rogue River between its confluence with the Applegate River and Lobster Creek. 1/

1/ This section of the Rogue River has been designated a "wild" river under section 3(a)(5) of the Wild and Scenic Rivers Act, as amended, 16 U.S.C. § 1274(a)(5) (1982).

The Permit authorized use as jointly scheduled by BLM and the U.S. Forest Service, U.S. Department of Agriculture (Forest Service), between May 24 and September 2, 1985, and at other times after submitting a trip card in advance of the trip.

On April 30, 1986, the Grants Pass Area Manager issued a decision proposing the imposition of an administrative penalty upon REUI for two incidents of noncompliance with the terms of REUI's Permit during the 1985 operating season. During that season REUI had contracted with the Sierra Club to supply baggage support for hiking trips on the Rogue National Recreation Trail. The proposed decision stated that appellant's agents had discussed reporting procedures for this type of commercial use with BLM representatives and were informed that any fees collected for services rendered were to be reported on the standard trip confirmation and authorization report (trip card).

The Area Manager stated that an examination of appellant's trip cards revealed a discrepancy between the fee reported by appellant and the amount appellant was paid for the two trips occurring on May 29 and June 5, 1985. The Area Manager stated that REUI's trip cards for the two dates showed no fees had been collected, but that REUI's client had reported paying $1,270 for each trip. The Area Manager further stated that the Permit provides for corrective action by the outfitter for the first instance of inaccurate reporting to the authorized officer, and probationary status for an outfitter's second offense. The Area Manager informed appellant that the submission of the inaccurate trip card for the May 29 trip constituted a first offense and submission of the inaccurate trip card on June 5 constituted a second offense. Based upon his findings, the Area Manager proposed that REUI be placed in probationary status during 1986, in accordance with the stipulations to the Permit. The proposed decision informed appellant of its right to protest the proposed decision.

Appellant protested the Area Manager's April 1986 proposed decision in a letter received by BLM on May 30, 1986, contending: "At no time did we try and hide the amount paid for this trip." Appellant asserted that because no set per-person per-day user fees were charged its clients on the May 29 or June 5 trips, the trip tickets were sent in blank. Appellant also stated that its employee had discussed the two trips with BLM employees and it was never its intent to avoid paying the appropriate fees.

In his June 9, 1986, final decision, the Area Manager affirmed the proposed decision, stating that appellant had offered "no substantive facts * * * which would or could refute the statement of violations as outlined in the proposed decision." Based on his review of the facts, the Area Manager placed the prior decision in full force and effect, with the following result:

> Rogue Excursions Unlimited, Inc. will be issued a one year permit under probationary status for 1986. All authorized use will be scrutinized for compliance to the approved operating plan. At the conclusion of the 1986 season, a performance evaluation will take place and the status of the Rogue Excursions Unlimited,

> Inc. permit will be updated to reflect observed performance during the season. Acceptable performance evaluation for 1986 will result in the re-establishment of your permit with only normal stipulations.

In its statement of reasons on appeal to this Board, appellant contends that the violations of May 29 and June 5, 1985, should be considered a single offense rather than two violations, "under the unique and unusual circumstances for which the type of commercial event encompassed." REUI objects to the implication of the decision that its failure to file accurate trip tickets was intentional. Appellant admits that an erroneous report was given (Additional Statement of Reasons at 1) but denies that the error was a false report constituting misconduct on its part. Appellant acknowledges the pre-trip conversation with the BLM representative and contends the initiation of that conversation vitiates the BLM insinuation that it had attempted to defraud the Government of fees.

The issue on appeal is whether appellant violated the terms of its Permit by failing to submit accurate trip cards to the authorized officer. A trip card is a joint BLM Forest Service form, which is filled out and signed by the outfitter and signed by an agency representative as a "final confirmation" of a trip. Part 2 of the trip card contains spaces for an outfitter to indicate the number of passengers transported and the fee charged.

The record contains copies of trip cards for the two REUI trips occurring on May 29 and June 5, 1985, signed by Denise Taylor, an employee of REUI. The section for reporting the fee charged was left blank on the earlier card and a zero (0) was entered in the "fee" space on the second card. Appellant neither denies that the May 29 and June 5, 1985, trips were conducted nor denies that payment was received. Rather, it is appellant's contention that this error was unintentional.

[1] Section 17 of the Permit states that the Permit is subject to "[a]dditional conditions, and stipulations attached." The stipulations applicable to this case were set out in a document entitled "Rogue National Wild and Scenic River Commercial Outfitter Operating Plan for Commercial Permittee in the Designated 'Wild' Section" (Operating Plan).

Section II of the Operating Plan contains the Permit stipulations referred to and made a part of the Permit. Paragraph 9 of that section states that permittee "must comply with all directions listed on the Rogue River Commercial Trip Confirmation and Authorization card" (Operating Plan at 6). In order to comply with this section an outfitter is required to indicate the number of passengers carried and the fee charged.

Section IV of the Operating Plan sets forth certain acts considered to be permit violations, the procedure for notifying an outfitter of permit violations, and the penalties attached to the violations. Specifically, the paragraph of Section IV entitled "Violation 2." states that providing inaccurate information to the authorized officer is considered to be a violation. Supra at 14. Appellant's failure to provide BLM's authorized

officer with accurate information on the trip card, whether intentional or unintentional, constituted a specified violation of the Permit.

Next we must consider whether the penalty imposed for appellant's failure to submit accurate information was proper. The Operating Plan also sets out the penalty to be imposed for Violation 2. In Section IV of the Operating Plan, under the heading "Penalty 2," the Operating Plan states that, for the first offense, the outfitter must "take immediate steps to rectify the situation to the satisfaction of the authorized officer." For a second offense, the Operating Plan calls for the same penalty as the first, with the following additional sanction: "Outfitter given probationary status." BLM considered the May 29, 1985, trip card violation as appellant's first offense, the June 5, 1985, trip card violation as the second offense, and invoked the "probationary status" penalty.

The importance of trip information and the need for accuracy in reporting the information to BLM is outlined in paragraph 12 of section II of the Operating Plan, which provides in relevant part: "Commercial fees are charged to provide a return for the special use of the Federal lands and to recover at least a portion of the cost of issuing and administering the commercial permit system" (Operating Plan at 7). The basic commercial fee for the 1985 operating season was $100 or 2 percent of the outfitter's adjusted charge per participant, whichever was greater. Therefore, appellant's failure to accurately complete the trip cards might have denied BLM the opportunity to collect fees necessary to the administration of the commercial permit system. 2/ The Permit and stipulations neither contemplate that a violation must be intentional nor provide for imposition of penalty only in the case of intentional violations. The penalties can be imposed for unintentional violations and the imposition of such penalties does not carry the stigma of intentional misconduct. 3/

Although BLM could have adopted a less onerous penalty in developing its Operating Plan, it chose not to do so. The Board has recognized that BLM has the inherent authority "to impose sanctions where, in BLM's opinion, an outfitter has violated * * * permit conditions." Robert L. Snook, 100 IBLA 151, 155 (1987); David Farley, Inc., 90 IBLA 112, 123 (1985), aff'd sub nom., Ken Warren Outdoors, Inc. v. United States, Civ. No. 86-0084-JAR (D. Or. Jan. 9, 1987), aff'd, 852 F.2d 571 (9th Cir. 1988); see also Osprey River Trips, Inc., 83 IBLA 98, 101 (1984). Appellant was

2/ We believe BLM's determination that each improperly completed trip card constituted a separate violation is a reasonable application of the stipulations. Any other interpretation would result in there being only one violation of that stipulation, no matter how many erroneous trip cards an outfitter might file in a season. The abuse that could result if the appellant's position were adopted is obvious.

3/ Had REUI's actions been found to be intentional, BLM could have found that it had falsified documents, rather than providing inaccurate information. In such cases, the stipulations provide for immediate revocation of the permit. See Violation and Penalty 4, Operating Plan at 14.

put on notice of the consequences of its failure to provide accurate information on the trip cards. BLM's decision merely imposes the penalties set out in the Operating Plan.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge.